

2017

Decisions of the Attorney General

Open Records

The following are brief summaries of Open Records Decisions made by the Office of the Kentucky Attorney General. Decisions that are appealed to the Kentucky courts are captured in the regular case law summaries provided by this agency. Unless appealed, these Decisions carry the force of law in Kentucky and are binding on public agencies. A copy of the applicable Kentucky Revised Statutes can be found at the end of the summary. It is possible that one or more of these Decisions are being appealed; these cases will be reflected in the Quarterly Case Law Updates of this agency.

Note that some Decisions do not directly involve a public safety agency, but are included due to the principles discussed and their likely applicability in the future to such agencies.

For a full copy of any of the opinions summarized below, please visit <http://ag.ky.gov/civil/orom/>.

KENTUCKY
Open Records Statutes
Updated through 2017

61.870 Definitions for KRS 61.872 to 61.884

(1) "Public agency" means:

- (a) Every state or local government officer;
- (b) Every state or local government department, division, bureau, board, commission, and authority;
- (c) Every state or local legislative board, commission, committee, and officer;
- (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
- (e) Every state or local court or judicial agency;
- (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- (g) Any body created by state or local authority in any branch of government;
- (h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
- (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
- (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
- (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;

(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;

(3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.

(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;

(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.

(b) "Commercial purpose" shall not include:

1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;

- (5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;
- (6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;
- (7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards;
- (8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device; and
- (9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099.

Effective: July 15, 2016

61.871 Policy of KRS 61.870 to 61.884; strict construction of exceptions of KRS 61.878

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

Effective: July 14, 1992

61.8715 Legislative findings

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 11.501 to 11.517, 45.253, 171.420, 186A.040, 186A.285, and 194B.102, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

Effective: June 25, 2009

61.872 Right to inspection; limitation

- (1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.
- (2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.
- (3) A person may inspect the public records:
- (a) During the regular office hours of the public agency; or
 - (b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.
- (4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
- (5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed

three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

Effective: July 15, 1994

61.874 Abstracts, memoranda, copies; agency may prescribe fee; use of nonexempt public records for commercial purposes; online access

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

Effective: July 15, 1994

61.8745 Damages recoverable by public agency for person's misuse of public records

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;

(2) Costs and reasonable attorney's fees; and

(3) Any other penalty established by law.

Effective: July 15, 1994

61.8746 Commercial use of booking photographs or official inmate photographs prohibited -- Conditions -- Right of action -- Damages.

(1) A person shall not utilize a booking photograph or a photograph of an inmate taken pursuant to KRS 196.099 originally obtained from a public agency for a commercial purpose if:

(a) The photograph will be placed in a publication or posted on a Web site; and

(b) Removal of the photograph from the publication or Web site requires the payment of a fee or other consideration.

(2) Any person who has requested the removal of a booking photograph or photo taken pursuant to KRS 196.099 of himself or herself:

(a) Which was subsequently placed in a publication or posted on a Web site; and

(b) Whose removal requires the payment of a fee or other consideration;

shall have a right of action in Circuit Court by injunction or other appropriate order and may also recover costs and reasonable attorney's fees.

(3) At the court's discretion, any person found to have violated this section in an action brought under subsection (2) of this section, may be liable for damages for each separate violation violation, in an amount not less than:

(a) One hundred (\$100) dollars a day for the first thirty (30) days;

(b) Two hundred and fifty (\$250) dollars a day for the subsequent thirty (30) days; and

(c) Five hundred (\$500) dollars a day for each day thereafter.

If a violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation.

Effective: July 15, 2016

61.876 Agency to adopt rules and regulations

(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:

(a) The principal office of the public agency and its regular office hours;

(b) The title and address of the official custodian of the public agency's records;

(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;

(d) The procedures to be followed in requesting public records.

(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.

(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.

History: Created 1976 Ky. Acts ch. 273, sec. 4.

61.878 Certain public records exempted from inspection except on order of court; restriction of state employees to inspect personnel files prohibited

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;

(c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:

a. In conjunction with an application for or the administration of a loan or grant;

b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or

d. For the grant or review of a license to do business.

3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;

(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;

(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;

(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted

after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;

(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;

(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

(k) All public records or information the disclosure of which is prohibited by federal law or regulation;

(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;

(m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments; b. Vulnerability assessments;

c. Antiterrorism protective measures and plans;

d. Counterterrorism measures and plans;

e. Security and response needs assessments;

f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;

g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and

h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.

2. As used in this paragraph, "terrorist act" means a criminal act intended to:

a. Intimidate or coerce a public agency or all or part of the civilian population;

b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or

c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.

3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.

5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law; and

(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Effective: June 25, 2013

61.880 Denial of inspection; role of Attorney General

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

Effective: July 15, 1994

61.882 Jurisdiction of Circuit Court in action seeking right of inspection; burden of proof; costs; attorney fees

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars (\$25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

Effective: July 14, 1992

61.884 Person's access to record relating to him

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

History: Created 1976 Ky. Acts ch. 273, sec. 8.

17-ORD-009

In re: Kathy Harris/Kentucky State Police

ISSUE:

Whether the Kentucky State Police (“KSP”) violated the Kentucky Open Records Act in denying requests for a copy of the body-worn camera (“bodycam”) video of a shooting death.

ARGUMENT:

KSP denied the request citing to KRS 61.878(1)(a). KSP claimed the “videos that recorded the incident contain extremely graphic images,” public disclosure of which “could irreparably harm the surviving shooting victims as well as the surviving family of the deceased.”

DECISION:

KSP violated the Open Records Law by withholding the video. Requests for body cam videos containing information that may be deemed of a personal nature should be analyzed in the same manner as a photograph containing similar personal information. In this situation, the requester is the mother of the perpetrator/deceased shooting victim whose body is visible on the subject video. The requestor has expressly waived her privacy interest under KRS 61.878(1)(a), which is a critical factor in the analysis. Furthermore, no other surviving family members have voiced an objection to the disclosure of the video. This holding should not be construed as establishing a general rule of application; rather, as in all cases involving application of KRS 61.878(1)(a), our holding is based on the particular facts presented.

17-ORD-011

In re: Matthew Smith/Kentucky State University

ISSUE:

Whether or not records relating to the University’s investigation(s) into allegations of sexual misconduct are shown to be protected by exceptions relied upon by the University.

ARGUMENT:

The records requested would require disclosure of private information regarding victims of sexual assault, which would violate the CLERY Act, the Violence Against Women Act, potentially FERPA, and victims’ fundamental rights to privacy.

DECISION: Kentucky State University failed to meet its burden of proof in denying the request. The University must make immediate provision for inspection and copying of the disputed records with the exception of the names and personal identifiers of the complainant and witnesses per KRS 61.878(1)(a). The result may have been different had the University provided the Attorney General's office with documents to review *in camera* as requested.

17-ORD-013 **In re: Lori Foster Flannery/Rowan County Sheriff's Department**

ISSUE: Whether the Rowan County Sheriff's Department violated the Open Records Act in its disposition of an open records request for a 1972 police report.

ARGUMENT: The requested report was not in the custody of the Rowan County Sheriff's Department. The case was handled by the Kentucky State Police.

DECISION: The Rowan County Sheriff's Office did not violate the Open Records Act. A public agency cannot provide a requester access to a record that it does not have or that does not exist. 99-ORD-98. The Sheriff's Department has satisfactorily explained the nonexistence of the records.

17-ORD-014 **In re: Matthew Smith and Nicole Ares/Western Kentucky University**

ISSUE: Whether requested records relating to the University's investigations into allegations of sexual misconduct were protected by exceptions where Attorney General was not given records to review *in camera* under authority of KRS 61.880(2)(c).

ARGUMENT: The University cited to KRS 61.878(1)(i) and (j) claiming exemption from the Open Records Act. The University stated the information requested did not pertain to any final agency action, nor was it adopted as part of a final agency action. WKU also claimed an exemption from production of the records by arguing the requested records would violate the personal privacy and federal law exemptions to the Open Records Act in KRS 61.878(l)(a) and (k).

DECISION: The University failed to meet its burden in justifying the failure to produce the records. The Attorney General requested an *in camera* review of the disputed documents, but was denied access by the University. Without production of the requested records, the Attorney General cannot determine whether said records fall into the cited exemptions.

17-ORD-026 **In re: Lawrence Trageser/Louisville Metro Government**

ISSUE: Whether or not the Louisville Metro Government (“LMG”) complied with the Open Records Act in failing to produce records or other evidence to refute the requester’s claim that said records were created or must exist.

ARGUMENT: LMG either has the requested records or improperly failed to retain the records.

DECISION: LMG did not violate the Open Records Act. An agency cannot produce nonexistent investigative records for inspection or copying nor is the agency required to “prove a negative” in order to refute appellant’s claim that such records were created or must exist. Having conducted a reasonable search for such records and notified the requester that any such records would have been properly destroyed in accordance with applicable records retention requirements, even assuming that any investigation was ever conducted, LMG discharged its duty under the Open Records Act.

17-ORD-039 **In re: Clarence Hixson/Louisville Metro Police Department**

ISSUE: Whether the Louisville Metro Police Department (“LMPD”) violated the Open Records Act in failing to timely provide requested records.

ARGUMENT: LMPD did not provide the requested records within the time provided for in the Open Records statutes.

DECISION: KRS 61.880(1) requires a written disposition of a request for public records within three days, excluding weekends and holidays. Under KRS 61.872(5), a longer time may be taken if a record “is in active use, in storage or not otherwise available.” In that instance, “the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless *a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.*” (Emphasis added.) We have previously stated that KRS 61.872(5) requires a “*date certain*, not a projected or speculative date, when the records will be available for inspection.” 01-ORD-38 (emphasis in original). LMPD did not invoke KRS 61.872(5) in its response nor did it claim the existence of any of the circumstances to which that subsection applies. Furthermore, LMPD neither gave a detailed explanation of the cause for delay nor complied with its given date by which to provide the records. Accordingly, we conclude that LMPD’s disposition of the request was in violation of the time requirements of KRS 61.880(1).

17-ORD-075

In re: *The Courier-Journal*/ Louisville Metro Police Department

ISSUE: Whether, under the circumstances presented, Louisville Metro Police Department (“LMPD”) violated the Open Records Act by withholding the names of witnesses in response to a request for a specified criminal investigative file on the basis of KRS 61.878(1)(a).

ARGUMENT: The requestor argues “that witnesses interviewed by police have no expectation of privacy and that the identity of witnesses is crucial in allowing the press and public to evaluate whether police are doing their jobs.” Thus, LMPD should provide un-redacted copies of the statements of witnesses except for those of juveniles.

DECISION: LMPD did not violate the Open Records Act. The documents in question refer to a case occurring over thirty (30) years ago. The addition of the witness names in dispute “would not significantly serve the public interest in monitoring the Department’s execution of its official functions. Thus, LMPD properly redacted the names of the witnesses on the basis of KRS 61.878(1)(a). Furthermore, the record on appeal does not contain any indication that LMPD failed to discharge its duties in the subject investigation.

17-ORD-088 **Stephen Knight/Boyle County Sheriff’s Office**

ISSUE: Whether the Boyle County Sheriff’s office discharged its duty under the Open Records Act by providing a written explanation as to why it did not have the requested records.

ARGUMENT: Requestor argues the Sheriff’s office failed to respond to his Open Records request. The Sheriff’s office claims it did not receive the request.

DECISION: The Attorney General’s office cannot resolve disputes regarding whether or not a request was received. However, the Sheriff’s office did adequately respond when it received notice of the request. The Sheriff’s office and the County Attorney provided a written explanation as to the nonexistence of the requested phone records to satisfy the burden imposed by KRS 61.880(2)(c). Furthermore, the agency provided the requestor with the agency contact, address and telephone number of the agency that may possess the records of the phone calls.

17-ORD-094 **In re: Lawrence Trageser/Kentucky State Police**

ISSUE: Whether the Kentucky State Police (hereinafter “KSP”) violated the Open Records Act by denying an Open Records request on the grounds the requested records, including a CAD report and dispatch tape, pertained to an open law enforcement investigation.

ARGUMENT: The requestor argues he did not request investigative files, pictures or evidence relating to this crime. Requestor notes he only requested the CAD report, which was specified to include the dispatch of all law enforcement units to the scene.

DECISION: KSP properly denied the request pursuant to the law enforcement exception. In order to successfully raise this exception [to disclosure], a public agency must satisfy a three-part test. The agency must first establish that it is a law enforcement agency or an agency involved in administrative adjudication. It must next establish that the requested records were compiled in the process of detecting and investigating statutory or regulatory violations. Finally, the public agency must demonstrate that disclosure of the information would harm it by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action. has been met. 11-ORD-102 at 2 (*citing* 07-ORD-139).

17-ORD-101 **In re: Jerrod Alley/Department of Fish and Wildlife Resources**

ISSUE: Whether the Department of Fish and Wildlife Resources (“Department”) violated the Kentucky Open Records Act in its disposition of a request for copies of certain hiring records.

ARGUMENT: The records were not provided within three days of receipt of the request, and the agency did not provide an explanation for the delay. Additionally, no explanation was given by the agency as to the reasons for withholding certain records or for redaction of records provided.

DECISION: The Department did not make a full or timely written disposition of the request, and further failed to meet its burden of proof as to the omissions and redactions made. The Department's response regarding delay gave no indication that the requested records were "in active use, in storage, or not otherwise available"; nor was any explanation given of the cause for further delay. Moreover in one response, the Department failed to provide the requestor with a date certain for the availability of the records. Additionally, the Department does not explain specifically what was redacted from the requested documentation nor does it explain why or describe which documents were withheld. This is a further violation of the Open Records Act.

17-ORD-114

In re: Patrick T. Malone/Kentucky State Police

ISSUE: Whether Kentucky State Police ("KSP") violated the Open Records Act in denying a request by a private individual for information directly related to information and records contained in the National Crime Identification Center ("NCIC") database.

ARGUMENT: The requestor claims he is "not requesting information from the database, but requesting information about access to the database." KSP argues the NCIC database contains confidential information pursuant to KRS 17.150(4) and is exempted from disclosure. KSP noted the requestor asked for "what information was looked up" in the database(s).

DECISION: KSP did not violate the Open Records Act in denying the request for information and records contained in the NCIC database pursuant to KRS 17.150(4) and the corresponding regulation. KRS 61.878(1)(l) operates to incorporate the mandatory language of the confidentiality provision of KRS 17.150(4) into the Open Records Act. Additionally, “[d]enial of access to centralized criminal history records maintained by KSP in the NCIC database has been approved in a series of open records decisions dating back to 1976.” 06-ORD-128, p. 4 (and the decisions referenced therein); 16-ORD-120. The Attorney General has also noted that KRS 61.878(1)(k) and (l) extend protection to “information” rather than only “records,” which is particularly significant here as KRS 17.150(4) “protects not merely records in physical form, but the *information* they contain.” 13-ORD-167, pp. 4-5 (original emphasis). Information such as whether anyone has accessed information pertaining to the requester in the NCIC database, and, if so, who, when, and why, falls within the parameters of KRS 17.150(4).

17-ORD-121

In re: Mary Sheibani/Kentucky State Police

ISSUE: Whether the Kentucky State Police (“KSP”) violated the Open Records Act in its denial of the request for case files related to the investigation into a murder.

ARGUMENT: KSP claims the requested documents pertain to an open criminal investigation and are exempt from disclosure. The requester argues no further criminal charges have been brought in relation to the murder, and the records requested relate to the investigation regarding an individual who is no longer under suspicion of being involved in or related to any investigation into the murder.

DECISION: On appeal, KSP justified refusal to release investigative records with adequate specificity, but denial of the incident report was improper without specific showing of harm. Although charges have been dismissed relating to the person in this matter, it is by no means clear that the prior investigation is factually separate from the ongoing one or that said individual has become irrelevant to the investigation. However, the request for the incident report was improperly denied. The “UOR-1 (Initial Page),” or first page of the Uniform Offense Report, is the functional equivalent of an initial offense report or incident report. 05-ORD-003. “[P]olice incident reports, as opposed to investigative files, are not, generally, exempt from public inspection” pursuant to KRS 17.150.09-ORD-205. Accordingly, the UOR-1 (Initial Page) should not have been withheld under KRS 17.150(2).

17-ORD-137 **In re: Desmond Dixon/Louisville Metro Police Department**

ISSUE: Whether Louisville Metro Police Department (“LMPD”) failed to conduct a reasonable search for all responsive records to the request regarding a criminal investigation.

ARGUMENT: Requestor argues that LMPD may have withheld responsive records.

DECISION: LMPD initially failed to conduct a reasonable search for all responsive records but, on appeal, provided the remainder of responsive records with the appropriate redactions under the personal privacy exemption. The response to the appeal on behalf of LMPD explains the Crime Scene Unit (“CSU”) and Property Room keep their own files and those records were not provided to the main file, which was the file initially provided. The additional records were supplied with the response to the appeal. LMPD did redact the “victim’s birthdate, phone number, and any addresses unrelated to the incident” pursuant to KRS 61.878(1)(a).

17-ORD-157

In re: Carfax, Inc./Kentucky State Police

- ISSUE:** Whether the Kentucky State Police (“KSP”) violated the Open Records Act by selective disclosure when it released data extracts from its CRASH database exclusively to a single commercial entity and further allowed that entity to dictate access fees to another qualifying entity which were not based on statutory factors.
- ARGUMENT:** KSP argues that it is given discretion via statute to choose to whom to release the data, and the restrictive conditions imposed by the private contractor do not prevent other entities from using the data.
- DECISION:** KSP violated the Open Records Act by selective disclosure when it released data extracts from its CRASH database exclusively to a single commercial entity under KRS 189.635(6), and further allowed that entity to dictate access fees to another qualifying entity which were not based on the factors provided in KRS 61.874(4)(c) and impose use restrictions.

17-ORD-176

In re: William Van Cleve/Kentucky State Police

- ISSUE:** Whether the Kentucky State Police (“KSP”) violated the Open Records Act in its disposition of a request for a copy of an audit of the City of Ravenna.
- ARGUMENT:** KSP argues it determined the requested records did not exist and notified the requestor via phone and followed up via letter sent outside the three day requirement.
- DECISION:** Kentucky State Police did not substantively violate the Open Records Act where it conducted a reasonable search for the requested record and ultimately informed the requester that it did not possess the record. Failure to respond in writing within three days of receiving the request for records was a procedural violation.

17-ORD-178

In re: Kate Howard/Louisville Metro Police Department

ISSUE: Whether Louisville Metro Police Department (“LMPD”) violated the Open Records Act in its disposition of a request for copies of body camera video recordings.

ARGUMENT: Requestor argues the requested video was not provided within the three day time frame required by law. LMPD, in its initial response to the requestor, did not advise the requestor that the video was in active use, in storage or not otherwise available, thus the blanket thirty day completion date did not meet the requirements of law.

DECISION: LMPD’s initial response to request for video recording failed to cite to KRS 61.872(5) as its basis for not providing the record within three days, did not state that the video was otherwise not available, and did not provide a detailed explanation as to why the video recording was not otherwise available. These initial procedural errors were rectified on appeal.

17-ORD-179

In re: Michael Maharrey/Lexington Police Department

ISSUE: Whether the Lexington Police Department (“LPD”) violated the Kentucky Open Records Act in partially denying requestor’s undated request for records pertaining to surveillance technologies owned or used by the [LPD].

ARGUMENT: The LPD denied possessing or using any of the listed technologies in the request with the exception of audio and video recording and monitoring technology. LPD maintained that responsive “purchase orders, grant applications, federal program applications and purchase receipts, training manuals and written policies governing the use of any of these technologies and SOP BOI 93-46A are exempt pursuant to KRS 17.150(2)(a)(b) and KRS 61.878(1)(m).”

DECISION: LPD’s initial and supplemental responses failed to satisfy its burden of proving that disclosure of the records in dispute would have a reasonable likelihood of threatening the public safety as required to successfully invoke KRS 61.878(1)(m).

17-ORD-183	In re: Robin Vessels/Cabinet for Health and Family Services
ISSUE:	Whether the Cabinet for Health and Family Services violated the Open Records Act in the disposition of its employee's request for copies of various e-mails pertaining to her.
ARGUMENT:	The Cabinet advised the requestor the emails no longer existed. The requestor argues the Cabinet should conduct a more thorough search for the requested items.
DECISION:	Cabinet for Health and Family Services conducted an adequate search for records and did not violate the Open Records Act by not attempting extraordinary measures to recover e-mails that were properly deleted.
17-ORD-184	<u>In re: Tyler Fryman/Kentucky State Police</u>
ISSUE:	Whether the Kentucky State Police ("KSP") violated the Open Records Act in its disposition of a request for records relating to internal handling of matters involving two troopers.
ARGUMENT:	KSP argues the items requested are preliminary in nature and thus are exempt from disclosure under the Open Records Act.
DECISION:	KSP improperly withheld Response to Resistance Report as preliminary where it was adopted as the basis of a decision to take no action. The Specific Contact Report was properly withheld as a note where it was not related to a complaint or administrative action but kept solely as an aid to memory.
17-ORD-191	<u>In re: Luke Morgan/Grayson County Board of Education</u>
ISSUE:	Whether the Grayson County Board of Education properly denied a request for a copy of a school surveillance video recording made at Grayson County High School.

ARGUMENT: The Board of Education argues the video tapes used to record student conduct are ‘education records’ within the meaning of FERPA and KFERPA. The video tapes are prohibited from viewing since the tapes would reveal the identities of students other than the attorney’s client. Mr. Morgan argues that if an adult was present in the requested video, the identity of that adult is not an “education record.”

DECISION: Grayson County Board of Education properly denied access to school surveillance video under KRS 61.878(1)(k) and (l), 20 U.S.C. § 1232g (FERPA), and KRS 160.700 *et seq.* (KFERPA), but failed to cite exception as required by KRS 61.880(1).

17-ORD-196 **In re: Michael Mazzoli/Office of Jefferson County Attorney**

ISSUE: Whether the Office of the Jefferson County Attorney (“JCAO”) violated the Open Records Act in its disposition of broad requests for records relating to “Drive Safe Louisville,” JCAO’s traffic safety program.

ARGUMENT: JCAO argues a large portion of the requested records “constitute inter-office or privileged communications that fall squarely within the exemptions provided by KRS 61.878(1)(i), (j), and [(l)].”

DECISION: After an *in camera* review, it was determined that the JCAO, with two exceptions totaling seven pages, properly withheld records.

17-ORD-199 **In re: Carrie Elliston/Kentucky Transportation Cabinet**

ISSUE: Whether the Kentucky Transportation Cabinet violated the Open Records Act by denying the request to inspect and/or copy all records relating to the requesting party and the outcome of a personnel investigation related to a fellow employee.

ARGUMENT: The Transportation Cabinet denied the request without any explanation for the denial other than blanket citations to the Open Records Statute.

DECISION: The Transportation Cabinet initially violated the Act by failing to explain how the cited exceptions applied to the withheld records. The Transportation Cabinet improperly denied the records related to and referencing the party requesting the records. Since the requestor is a public employee, KRS 61.878(3) overrides the cited exceptions and affords her a greater right of access.

The Cabinet cannot withhold requested records based upon Hippa as it has asserted. It is not a “covered entity.”

The outcome of a formal or informal personnel investigation is not exempt from the Open Records Act.

17-ORD-201 **In re: Jordan Harrod/Office of Oldham County Judge-Executive**

ISSUE: Whether the Oldham County Judge Executive actions relative to an email request for employee hire dates and salary information violated the Open Records Act.

ARGUMENT: The Judge-Executive’s office responded with an email stating the records’ custodian was on vacation and would respond to the request upon return. On appeal, the Judge-Executive advised the email did not reference an Open Records request, and the office was not required to respond to a request made via email.

DECISION: The requestor of the records is not required to specifically reference the Open Records Act in order to satisfy the statute; however, email is not a statutorily recognized method of submitting a request. The office of the County Judge-Executive was not required to honor the request.

17-ORD-213 **In re: The Courier Journal/University of Louisville**

ISSUE: Whether the University violated the Open Records Act in partially denying the requestor’s inquiry relating to the computer of the former University president.

ARGUMENT: The requestor complained on appeal that one email string was withheld by the University on the basis that the document concerned an ongoing law enforcement investigation. The University claimed the release of the email would compromise the investigation by revealing the nature or scope of the information sought.

DECISION: The law enforcement exception to the Open Records Act does not apply because the requested emails were generated in the normal course of business and not as an integral part of a specific detection and investigation process. The records requested must be disclosed.

17-ORD-216 **In Re: Sam Aguiar/Louisville Metro PD**

ISSUE: Did Louisville Metro PD violate the Open Records Act in its disposition of two open records request asking for a variety of items related to the execution of a search warrant?

ARGUMENT: Four complaints were raised on appeal. The Department did not produce and audio or video recordings; the dispatch audio provided was not complete; the professional standards unit file was not produced; unreleased files were not identified.

DECISION: 1. The Department did not violate the Open Records Act by failing to provide the professional standards unit file. The PSU investigation was pending and any items in the file were preliminary in nature and not subject to the ORA. 2. The Department violated the Open Records Act by providing redacted copies of dispatch audio. The Department did not articulate a specific privacy interest nor did it explain specifically what was redacted for privacy reasons. 3. The Department did not violate the ORA by failing to provide audio or video recordings. Said recordings do not exist, thus, the Department cannot provide access to something that does not exist.

17-ORD-224 **In re: *The State Journal*/Cabinet for Health and Family Services**

ISSUE: Whether the Cabinet for Health and Family Services violated the Open Records Act in denying a request for all records pertaining to the state's involvement in a child fatality investigation.

ARGUMENT: The Cabinet argues the records should be withheld until the investigation has concluded pursuant to KRS 61.878(1)(h).

DECISION: The Cabinet cannot justify nondisclosure pursuant to KRS 61.878(1)(h) and is, therefore, in violation of the Open Records Act. Citing the Kentucky Supreme Court in *City of Fort Thomas v. Cincinnati Enquirer*, 406 S.W.3d 842 (Ky. 2013), the Attorney General noted that when an investigative record pertains to a prospective law enforcement action the law enforcement exemption is properly invoked only when because of its content, the record's release poses a concrete risk of harm to the agency. In this matter, the Cabinet could not articulate a concrete risk of harm from the release of the record.

17-ORD-230 **In re: Danny McIntosh/Wolfe County Sheriff's Department and County Judge/Executive**

ISSUE: Whether the Wolfe County Sheriff's Department and County Judge/Executive violated the Open Records Act in denying requests for access to various communications records.

ARGUMENT: The Sheriff's Office and County Judge/Executive argue the records requested may be directly part of a pending criminal investigation related to the requester.

DECISION: The Wolfe County Sheriff's Department and County Judge/Executive violated the Open Records Act by failing to respond in writing to requests for public records and failing to show applicability of KRS 61.878(1)(h); criminal litigation does not abrogate the Open Records Act.

17-ORD-233 **In re: Larry Forman/Kentucky State Police**

ISSUE: Whether the Kentucky State Police ("KSP") violated the Open Records Act in regard to a request for copies of the Fulton Police Department's video footage, 911 records, officer and witness narratives, investigative records, and press materials relating to a shooting incident.

ARGUMENT: KSP argues that although grand jury returned a No True Bill, the case remains open due to the pending disposition of evidence and administrative review. KSP further claims that because the case is in active use pending disposition of evidence, the records are not immediately available.

DECISION: KSP failed to articulate harm caused to the agency in releasing records from a completed case merely pending disposition of evidence and failed to justify withholding the records with specificity.

17-ORD-255

In re: Wayne Gilreath/Kentucky Real Estate Commission

ISSUE: Whether the Kentucky Real Estate Commission (“KREC”) violated the Open Records Act in its denial of a request for an investigative report.

ARGUMENT: KREC argues the report is exempt from the Open Records Act until the report is adopted as part of the administrative action.

DECISION: KREC lawfully denied access to investigative report pertaining to administrative matter as “preliminary” under KRS 61.878(1)(i) and (j) where final action had not yet been taken.

17-ORD-258

In re: Wesley E. Bright/Kentucky Department of Fish and Wildlife

ISSUE: Whether the Department of Fish and Wildlife violated the Open Records Act by withholding requested hunting and fishing records.

ARGUMENT: The Kentucky Department of Fish and Wildlife argues providing a complete copy of an individual’s hunting/fishing records including names and personal information of the individual hunters/anglers is an unwarranted invasion of personal privacy pursuant to KRS 61.878(1)(a).

DECISION: The Department of Fish and Wildlife may withhold the personal information by which private individuals may be identified from hunting and fishing records on the basis of KRS 61.878(1)(a), but violated the Open Records Act in withholding the requested “hunting/fishing records” in their entirety.

17-ORD-265

In re: Jon Fleischaker/Louisville Metro Police Department

ISSUE: Whether Louisville Metro Police Department (“LMPD”) violated the Open Records Act in its disposition of a request for investigative and internal review records.

ARGUMENT: LMPD argues no decision has yet been made as to whether the case will be presented to the grand jury. LMPD asserts that the investigation file is exempt pursuant to KRS 61.878(1)(h) and KRS 17.150(2). The requestor argues that LMPD cannot withhold the entire investigative file.

DECISION: LMPD initially violated the Open Records Act by failing to provide the specificity required to withhold investigative records under KRS 17.150. However, this error was rectified on appeal.

17-ORD-269

In re: Lawrence Trageser/Kentucky State Police

ISSUE: Whether the Kentucky State Police (“KSP”) violated the Open Records Act in its disposition of the request to inspect the KSP Investigative file on former Taylorsville police officers.

ARGUMENT: The requestor argues KSP did not timely respond nor made a reasonable search for records requested.

DECISION: KSP initially failed to make an adequate search for records and did not timely fulfill an open records request, but substantively was justified in redacting an explicit photograph and personal information of private individuals pursuant to KRS 61.878(1)(a) and withholding reports of suspected child abuse or neglect pursuant to KRS 620.050(5).

17-ORD-273

In re: Lawrence Makana Eyre/University of Kentucky

ISSUE: Whether the University violated the Open Records Act, or subverted the intent of the Act within the meaning of KRS 61.880(4), in the disposition of a request for e-mail correspondence between a computer science professor and certain domains.

ARGUMENT: The University argues a search was conducted and there were no e-mails on the university owned servers. The requestor argues the requested items remain public records no matter which server they are located.

DECISION: The University failed to make a timely response to request for records, failed to conduct an adequate search for e-mails, and improperly allowed an employee to conduct public business on a private e-mail account through automatic forwarding of all messages on his public account; failure to properly maintain public e-mail is a records management issue warranting inquiry by the Department for Libraries and Archives.

